IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 179 of 2000

Date of Decision: 26 .06.2007.

State of H P. Appellant.

Versus

Anchal Singh Jamwal. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? Yes.

For the appellant : Sh.V K Verma, Additional Advocate General.

For respondent. : Shri N.S. Chandel, Advocate, vice Shri Rakesh Jaswal, Advocate.

Surinder Singh, J . (oral)

The respondent was put on trial before the Judicial Magistrate, Nurpur in a case registered under Sections 353 and 332 of the Indian Penal Code, in Criminal case No. 118-2 of 1995. He was acquitted by a detailed judgment on 16-2-1999.

The State-appellant felt aggrieved by the impugned judgment, accordingly it has been assailed in the instant appeal, on the ground that the learned trial Court did not appreciate the evidence of the prosecution in its right perspective, further that it has set the un-realistic standards to evaluate the direct and cogent evidence of the prosecution.

The leave to appeal was granted on 24-4-2000 by this Court. Now the matter has been finally heard.

Shri V.K. Verma, learned Additional Advocate General has forcefully argued that the learned trial Court has ignored the cogent and convincing

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Whether reporters of the Local papers are allowed to see the judgment? Yes.

evidence of the complainant duly corroborated by the independent witnesses of the occurrence. Therefore, the impugned judgment of acquittal deserves to be reversed and the respondent be convicted in accordance with law.

Shri Nareshwar Singh Chandel counsel for the respondent has supported the impugned judgment and has taken me through the evidence on record to show that the reasons given by the trial Court are cogent and correct.

I have bestowed my best consideration to the rival contentions of the parties.

In order to come to a just conclusion, I have also re-appraised the evidence. Precisely, the case of the prosecution which was initially set up against the respondent was that on 5-4-1994, the complainant Parminder Singh was Fitter in Irrigation and Public Health Department. He was deputed to regulate the water supply of village Dehkwan in Tehsil Nurpur. It is alleged that the respondent was constructing his house, therefore, he requested the complaint to divert the supply of water round the clock towards his premises to which the complainant refused and advised him to contact the higher officials but instead of doing so, the respondent started fiddling with the feeder-value and diverted the water towards his premises. The complainant asked the respondent not to do so. On this, the respondent attacked him with wrench and a plier. On hearing the cries, Sanjeev (PW1) and Subhash Chand (PW2) Pradhan Gram Panchayat came to the spot and rescued him. On the basis of this information, a formal FIR was registered under the aforesaid Sections. The complainant was medically examined. After completing the investigation, the challan was put up in the Court.

The respondent was charge-sheeted for the offences above mentioned. He pleaded not guilty and claim trial.

To prove its case, the prosecution examined Sanjeev Kumar (PW1) Subhash Chand (PW2), Parminder Kumar complainant (PW3), Inspector Parma Ram (PW4), Dr. Vijay Kumar (PW5) and N.K. Tiwari, Executive

Engineer (PW6). The circumstances which were found attendant upon the respondent were also put to him in his statement recorded under Section 313 of the Code of Criminal Procedure in which he denied all the allegations. While pleading his innocence, a false implication was alleged. No defense was led.

The respondent was acquitted on the ground that the prosecution could not prove the ingredients of the offence charged and further relied upon the contradictions appearing in the statements of the witnesses.

The complainant was examined as PW3. He had tried to corroborate the allegations made in the FIR. According to him, when the respondent was beating him, he had raised hue and cry and on this, Pradhan Gram Panchayat (PW2) and Sanjeev Kumar (PW1) got attracted and relieved him from the clutches of the respondent. Sanjeev Kumar (PW1) has not supported his version. He was declared hostile. Though in cross-examination he has stated that he saw the respondent holding the wrench from one end and by the complainant Parminder on the other. Both were pulling it towards each other by force, in that consequence, the complainant fell down, by that time, Subhash (PW2) had also reached. Subhash Chand had also made a similar statement and further stated that the complainant disclosed to him that the respondent was fiddling with the feeder-value but when PW2 had asked the complainant to leave the snatching of the wrenches from the respondent, he did not leave. However, the respondent was able to take the wrench back.

On the critical examination of the aforesaid evidence what transpires, is that the version given by the complainant was absolutely incorrect that he was beaten up by the respondent at the relevant point of time. His statement has not been corroborated by the independent witnesses who were present at the spot. On the top of it, the prosecution has not been able to prove that the complainant was in lawful discharge of his duty at the relevant time which is a sine qua non, to attract the offences charged. The statement of Executive

Engineer (PW6) is worth noticing. He has clearly stated that at the relevant time, one Shri Sushil Kumar was the lineman whose duty was to regulate the water supply but he was on a paid holiday and this Fitter was looking after his work. Further, according to him there are standing orders with respect to the duties of the Fitter and Pipeline man available in their Department but none of these standings orders were brought on record. Therefore, it cannot be said that the complainant was in lawful discharge of his duties at the relevant point of time. Further, the aforesaid independent witnesses have also not stated any where in their statement that the injuries which were alleged to have been caused to the complainant, as indicated in the Medico Legal Certificate Exhibit PW5/A were caused by the respondent.

In view of the aforesaid material discrepancies, the evidence of the prosecution was lacking in its material particulars which does not meet the warp and woof of the prosecution case. Therefore, the view taken by the learned trial Magistrate while acquitting the accused is not perverse but is born out from the evidence on record.

Therefore, the impugned judgment of acquittal is up-held and the appeal is dismissed. The respondent is discharged of the bail bonds entered upon by him at any time during the proceedings of this case. The appeal is disposed of accordingly.

(Surinder Singh)
Judge.

June 26, 2007.
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